

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In re

Amendment of Part 74 of the  
Commission's Rules With Regard  
to the Instructional Television  
Fixed Service

MM Docket No. 93-24

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**REPLY COMMENTS IN RESPONSE TO  
ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**

1. The United States Interactive & Microwave Television Association ("USIMTA"), pursuant to Sections 1.415 and 1.419 of the Rules, submits these Reply Comments in response to the Commission's Order and Further Notice of Proposed Rulemaking, released July 6, 1994, MM docket No. 93-24, FCC 94-148.

**I. Preliminary Statement**

2. On August 29, 1994, the Wireless Cable Association International, Inc., ("WCAI") filed comments in response to the Commission's Order and Further Notice of Proposed Rulemaking in MM Docket No. 93-24. USIMTA has reviewed the comments filed by WCAI and wholeheartedly supports and endorses the positions WCAI takes with respect to modifying the ITFS application process. However, USIMTA opposes the proposals WCAI makes regarding

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Protected Service Areas ("PSA") and financial showings of ITFS applicants.

3. Specifically, USIMTA maintains that the most effective approach in deterring speculative applications is not by modifying the PSA definition or restricting PSA applicability, but rather by requiring third party ITFS applicants and where appropriate, their excess channel capacity lessees to make an adequate showing of financial ability supported by audited financial statements or any other financial showing that is acceptable under generally accepted accounting principles. Merely, to require ITFS applicants that rely on another party to finance construction to provide a certificate of financial ability is not sufficient to deter speculation. To deter speculative applications, audited financial statements should be required as well.

**II. The Most Effective Means of Deterring Speculation is to Require Third Party ITFS Lessees to Provide Audited Financial Statements that Support Their Ability to Construct ITFS Stations.**

4. WCAI proposes that the Commission modify the PSA boundary for each station that transmits omnidirectionally so that it is set at a fixed mileage (subject to the particular radio horizon of the station), with the length of the radius dependent upon the EIRP at which the station radiates.<sup>1/</sup> To

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<sup>1/</sup> WCAI Comments at 13.

the extent that WCAI expresses concern regarding deterring speculative applications and greenmail by means of modifying the PSA definition, the answer lies not in its technical approach to the PSA definition, but rather the solution lies with the need to more thoroughly examine the financial qualifications and proposals of third party ITFS lessees. The more practical approach is to reduce the number of speculative applicants and the opportunity for unscrupulous applicants to greenmail by weeding them out of the applicant pool. The opportunities for abuse abound unless applicants know that they must be financially qualified to construct, and that their proposals may be tested. The area of broadcast regulation supplies an abundance of evidence in this area. This would not only deter speculation, but also reduce the administrative costs of reviewing sham applications.

5. In addition, WCAI supports the Commission's proposal of considering applications mutually exclusive where two or more applications filed during the same window are only mutually exclusive because of one or more PSA requests.<sup>2/</sup> The flaw in the Commission's proposal and hence WCAI's support thereof, is that there is nothing to prevent speculators from filing applications that may be considered mutually exclusive because of a PSA request. The objective of deterring speculative

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<sup>2/</sup> WCAI Comments at 19.

applications would best be achieved by requiring a thorough examination of the financial ability of every ITFS applicant.

6. As another deterrent to speculation, WCAI also proposes that the Commission require ITFS applicants that rely on another party to finance the construction of its ITFS stations to provide certification, made under penalty of perjury, of their financial ability to fulfill their obligation.<sup>3/</sup> USIMTA believes this is a sensible proposal but maintains that it should be taken one step further to also require such third party financiers to provide audited financial statements supporting their ability to fulfill their financial obligation.

## II. Conclusion

6. USIMTA recognizes and endorses many of the proposals WCAI made in its Comments on modifying the ITFS application process. However, USIMTA disagrees with WCAI on its ideas regarding deterring speculative ITFS applications. USIMTA maintains that the most effective means of deterring speculation

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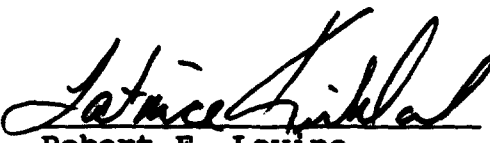
<sup>3/</sup> WCAI Comments at 21.

is to require third party ITFS lessees to provide credible financial certification of their ability to construct.

Respectfully submitted,

USINTA

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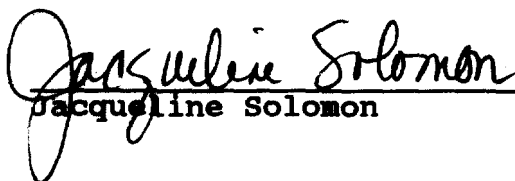
Its Attorneys

September 28, 1994

**CERTIFICATE OF SERVICE**

I, Jacqueline Solomon, a secretary with the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 28th day of September, 1994, copies of the foregoing "Reply Comments In Response To Order and Further Notice Of Proposed Rulemaking" was sent by first class mail, postage prepaid to the following:

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